

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

CIVIL APPLICATION NO.1822 OF 2007

IN

WRIT PETITION NO. 1311 OF 2007

Smt. Parvatibai Kamlu Bhujpal.... Petitioner

versus

Smt. Sakubai Kamlu Bhujpal & ors..... Respondent.

Mr. S.N.Chandrachud for the petitioner.

Mr. S.A.Sawant for respondent nos. 3 and 4.

CORAM; A.P. DESHPANDE, J.
DATED; 26TH SEPTEMBER, 2007

P.C.;

1. The Writ Petition has been filed by Smt.Parvatibai who expired on 13-3-2007 and hence this applicaiton is filed by the alleged L.Rs. of the deceased.

2. The impugned order in the writ petition is passed by the trial court, rejecting the application moved by the petitioner to permit her to lead evidence when the suit was fixed for pronouncement of the judgment, obviously after closure of the evidence by both the sides. As stated hereinabove, during pendency of the writ petition, an application came to be filed for bringing L.Rs. on record in this writ petition, so also an identical application was moved before the

trial court with a view to bring the L.Rs. of the deceased petitioner on record. The order passed by the trial court dated 21-7-2007 is filed at Exh.C wherein the trial court has observed that as the question in regard to L.Rs. is subjudice in the High Court in this writ petition, it is not desirable to hold an enquiry under Order 22 Rule 5 of CPC. The trial court by so observing, has adjourned the matter to a further date. It is the case of the respondent that defendant no.1 is the second wife of late Kamlu and both the marriages of Kamlu were performed prior to coming into force of Hindu Marriage Act of 1956. Hence the application for bringing L.Rs. on record is being stoutly opposed by defendant no.1.

4. Having regard to the nature of controversy, I am of the view that the trial court need to be directed to make an enquiry to find out as to whether the persons claimed to be the L.Rs. of the deceased are the legal representatives of the deceased/plaintiff or otherwise. I direct the trial court to make an enquiry and determine the question of legal representatives. Needless to mention that the trial court shall record findings and reasons in support of its order. The trial court shall complete this exercise as far as possible within a period of three months from today. C.A. is accordingly disposed of.

